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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/824,827	04/15/2004	Claude Ray		7739
33376	7590	08/06/2008		
KENNETH L. TOLAR 2908 Hessmer Avenue Metairie, LA 70002				
EXAMINER				
REESE, DAVID C				
ART UNIT		PAPER NUMBER		
3677				
MAIL DATE		DELIVERY MODE		
08/06/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/824,827

Applicant(s)

RAY ET AL.

Examiner

David C. Reese

Art Unit

3677

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 May 2008.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-20 is/are pending in the application.
4a) Of the above claim(s) 15 and 16 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 11-14 and 17 is/are rejected.
7) ☒ Claim(s) 18-20 is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

In view of the appeal brief filed on 5/21/2008, PROSECUTION IS HEREBY REOPENED.

To avoid abandonment of the application, appellant must exercise one of the following two options:

- (1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,
- (2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

/Victor Batson/

Supervisory Patent Examiner, Art Unit 3677

- Claims 15-16 are withdrawn (see below).
- Claims 11-20 are pending.

Election/Restrictions

[1] After further examination of the instant case, it has become apparent to the examiner that the species elected by applicant on 4/14/2005 of figures 3-5 and 6 do not read onto claims 15-16 of the current claims listing. Said claims call for a casing having an outer edge with an indentation thereon (claim 15) and a switch hingedly secured at a first end to said housing (claim 16); both features of which are drawn to the non-elected species of figures 1-2.

Consequently, the drawing and 112 rejections (with regard to showing claimed subject matter) as articulated earlier in prosecution have thus been rescinded (see below), but however,

since claims 15-16 are directed to a non-elected species (figures 1-2 and 6), the examiner has withdrawn claims 15-16.

Claim Rejections - 35 USC § 103

[2] The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

[3] Claims 11-12 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Albanese, US-4,764,850, in view of Hartman, US-5,971,829.

Although the invention is not identically disclosed or described as set forth 35 U.S.C. 102, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a designer having ordinary skill in the art to which said subject matter pertains, the invention is not patentable.

As for Claim 11 Albanese teaches of a jewelry item with a rotating gemstone comprising:

a substantially hollow housing (22) having an upper end (25) and a lower end (24);

a bezel (42) rotatably mounted on the upper end (25) of said housing (22) (via 18);

a gemstone (20) mounted on said bezel (42);

a motor means (M) received within said housing (22) for automatically rotating said bezel (42) and said gemstone (20) at a predetermined, discrete speed;

a gear assembly (32, 33) including a plurality of gears (32, 33) driven by said motor means (M) and operably connected to said bezel (42), said gears (32, 33) having a predetermined, precise gear ratio for rotating said bezel (42) at a discrete speed,

a drive gear (32) connected to said means (M); and a bezel gear (33) connected (via 18) to said bezel (42).

The difference between the claim and Albanese is that Albanese does not expressly state of an intermediate gear with a sprocket extending therefrom in conjunction with the drive gear and bezel gear. Hartman teaches of a rotating device for a cup (see fig. 1) including a motor means (22) and gear assembly (24-30) similar to that of Albanese, said gears having a predetermined, precise gear ratio for rotating. In addition, Hartman further teaches of said gear assembly including that of a drive gear (24) connected to said motor means (22); an intermediate gear (28b) engaging (via 28a) said drive gear (24), said intermediate gear (28b) having an upper surface (top of 28b) with a sprocket (26) extending therefrom and a cup gear (28c) connected to said cup (32) and engaging said sprocket (26). Though Hartman may teach of the above gear assembly being used in conjunction with the rotation of a cup {for food and the like}, it would have been obvious to one having ordinary skill in the art to use the gear assembly as taught by Hartman for the gear assembly as shown in Albanese since the operation or rotation of the rotating device is in no way dependent upon whether the device being rotated is a bezel or a cup, thereby achieving the predictable results of that particular torque and/or speed associated with a three gear assembly of Hartman as opposed to two gear assembly of Albanese (see also the teaching as articulated by Hartman, “The drive mechanism can include any number and combination of gears or other drive elements, so long as sufficient output torque and speed are

produced" (col. 6, lines 42-46)). A person with ordinary skill in the art has good reason to pursue the known options within his or her technical grasp. In turn, because the gear assembly as claimed has the properties predicted by the prior art of Hartman, it would have been obvious to modify the gear assembly of Albanese in order to gain the commonly understood and predictable benefits and applications of such an adaptation and/or modification including that of user preference and design for a desired torque and speed of rotation of the device.

Re: Claim 12, Albanese teaches wherein said discrete speed is between 2 and 4 revolutions per minute (from column 3, line 12, "gearing to a range of 2 rmps to 3 rmps").

Re: Claim 17, Hartman teaches further comprising a lower spacer plate (21b) superimposed on said drive gear (24), said spacer plate (21b) having an aperture (36b) with said drive gear (24) received therein.

[4] Claims 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Albanese, US-4,764,850, in view of Hartman, US-5,971,829, and in further view of Marshall, US-6,209,242.

Although the invention is not identically disclosed or described as set forth 35 U.S.C. 102, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a designer having ordinary skill in the art to which said subject matter pertains, the invention is not patentable.

As for Claim 13, Albanese in view of Hartman teach of the above claims including that of motor means for operating the gear assembly.

The difference between the claim and Albanese in view of Hartman is that Albanese in view of Hartman do not expressly teach of said motor means being that of a quartz motor. Marshall discloses a rotating device for jewelry (col. 2, lines 50-54). In addition, Marshall further teaches of using a quartz movement motor for the motor means. It would have been obvious to one of ordinary skill in the art, having the disclosures of Albanese in view of Hartman and Marshall before him at the time the invention was made, to modify the motor means of Albanese in view of Hartman to include a quartz movement motor as in Marshall. One would have been motivated to make such a combination because the user may desire the need for a motor means for a rotating mechanism which can be manufactured and utilized at a low cost in order to employ a multiplicity of such devices; as taught by Marshall, as well as a motor means taking advantage of piezo electricity which can be aesthetically pleasing, as well as the accuracy of movement that accompanies the use of a quartz motor. A person with ordinary skill in the art has good reason to pursue the known options within his or her technical grasp. In turn, because the quartz motor as claimed has the properties predicted by the prior art of Marshall, it would have been obvious to modify the motor means of Albanese in view of Hartman in order to gain the commonly understood and predictable benefits and applications of such an adaptation and/or modification including that of cost and accuracy of movement.

Re: Claim 14, Marshall teaches wherein said motor means further comprises an integrated circuit (col. 2, beginning with line 61) [for controlling speed and torque of said quartz movement motor].

Allowable Subject Matter

[5] Claims 18-20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

[6] Applicant's remarks filed 7/31/2007, with respect to the rejection(s) of claim(s) under then Albanese in view of Hartman have been fully considered. In view of the art of record, however, the rejection with regard to Albanese in view of Boyle et al. (later in view of Hartman) has been withdrawn; with new grounds of rejection presented in view of Albanese, in view of Hartman, and Marshall. Consequently, all arguments are considered moot to said new grounds of rejection.

Conclusion

[7] **THIS ACTION IS NON-FINAL**

[8] Any inquiry concerning this communication or earlier communications from the examiner should be directed to David C. Reese whose telephone number is (571) 272-7082. The examiner can normally be reached on 7:30 am-6:00 pm Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J.J. Swann can be reached at (571) 272-7075. The fax number for the organization where this application or proceeding is assigned is the following: (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

David Reese
Assistant Examiner
Art Unit 3677

DCR

/Victor Batson/
Supervisory Patent Examiner, Art Unit 3677